City of Lafayette Staff Report

For:	City Council
By:	Niroop K. Srivatsa
Date Written:	April 7, 2008
Meeting Date:	April 14, 2008
Subject:	**Fourth Amendment to the Town Center Development Agreement**

Purpose

To introduce Ordinance 574 approving the Fourth Amendment to the Town Center Development Agreement which:

1. Extends the term of the Development Agreement for no more than two additional years.

2. Allows either: (i) an office use as originally contemplated in the Development Agreement or (ii) a residential use for Phase III of the Town Center development

3. Describes the attributes of the residential project alternative

4. Establishes specific fees which may be charged in the event that a residential project alternative is pursued

Town Center Phase III History

In 1998, the Lafayette City Council entered into a development agreement with Lafayette Town Center Associates to redevelop a 4.84-acre property in the downtown core. As part of the agreement, the Council rezoned the property to P1 (planned development) and approved a mixed use development consisting of three phases – commercial, multi family residential and office. Phases I and II were built and occupied shortly thereafter. The third and final phase, approved for a 26,000 square foot office building, is as yet undeveloped.

In 2003, the applicant, now called Lafayette Residential Partners, LLC, (LRP) submitted an application for a 73-unit apartment project in place of the approved office building in Phase III. While the City indicated that it supported the change in use from office to multi-family residential, the proposed application was considered by the Planning Commission and found to be inconsistent with the BART Block Specific Plan. That application has since been withdrawn.

In 2005, the property owner entered into a contract to sell Phase III to KB Home South Bay, Inc. KB Home's proposal contained 76-unit luxury condominium units, five live/work units, a 3,000 square-foot restaurant and at least two levels of underground parking. Schematics of this proposal designed by the architectural firm Heller Manus were presented to the City Council,

10B

Planning Commission and Design Review Commission at a joint meeting in 2005. However, in early 2006, KB Home terminated its contract to purchase the property.

In May 2006, the applicant and the City entered into a Settlement Agreement to resolve a dispute related to the Development Agreement, which required the City to amend the Development Agreement to include a luxury condominium component with affordable housing as further defined in the Settlement Agreement. The Settlement Agreement referenced the Heller Manus plans which, as previously stated, contained a restaurant and live/work units.

In January 2007, the City engaged the services of Libby Seifel, a certified planner with experience in real estate economics and urban development to assist the City and property owners in understanding the trade offs between an office project and a residential project. Ms Seifel stated that if the parties wanted a residential use on the subject site, the standards and criteria set forth in the Settlement Agreement , particularly the requirements for a restaurant and resultant parking, made such a use cost prohibitive. She recommended that the parties work together to come up with a way to make a residential project a reality.

Based on the consultant's analysis, the City Council directed Mayor Anderson and Councilmember Federighi to meet with Rick Dishnica and Ivan Glover, owners of Phase III of the Town Center development to explore ways to achieve a residential option for Phase III. In February 2008, after several months of negotiations, the Council subcommittee submitted amendments to the Settlement Agreement for the City Council's consideration and approval. The document was approved by the City Council on February 25, 2008 and includes details of the residential project alternative including the design, uses, affordable housing requirements, fees and the application review process. These terms of the amended Settlement Agreement have now been encapsulated in the attached Fourth Amendment to the Development Agreement.

On a separate note, in March 2007, the applicant (LRP) received approval of the final development plans for the office building from the Planning Commission. An application for a building permit to construct the office building was filed and approved subject to payment of City fees.

Fourth Amendment to the Development Agreement

Following are the proposed changes to the 1998 Development Agreement:

Term of the Agreement (Refer to Section 8)

The term of the Agreement is extended for no more than two additional years following execution of the Settlement Agreement and shall extend until the earlier of: (1) the expiration of twelve (12) months from the issuance of the final certificate of occupancy for Phase III or (2) twelve (12) years after the effective date of this Agreement (1998), if no building permit is obtained for the development of Phase III. At present, the Development Agreement is scheduled to expire in late May 2008.

Land Use (Refer to Section 3)

The Agreement allows for a residential alternative to the office use approved for Phase III. The attributes of a residential alternative are described below.

Attributes of a Residential Project (Refer to Sections 3 and 4)

Uses, site plan and elevations: The Developer is to retain Heller Manus Architects to produce conceptual plans for the residential project which will retain the general footprint, general elevations, general site plan and general plaza dimensions of the earlier proposal. (Recall that Heller Manus prepared the conceptual studies of the Phase III project site for KB Home in 2005.) However, the City is agreeing to the following changes to the Heller Manus plans:

1. The requirement for a restaurant is removed provided that an acceptable open space substitute is proposed that meets City parking requirements. The Developer shall apply for a Land Use Permit to define the specific acceptable open space substitute or public or quasi public interior space substitute for the prior required restaurant use.

2. There is no longer a requirement for live/work units, provided that an acceptable alternative is proposed that enlivens the southern edge of the development that meets City aesthetic requirements.

3. The Developer may provide a feasible design for a naturally ventilated parking garage that meets City aesthetic requirements and that responds to the need to enliven the southern edge of the development. However, nothing shall prevent the Developer from constructing an underground garage which is called for in the Heller Manus plans.

Height: In no case shall the height of the buildings exceed the height of the existing Residential and Retail Components.

Parking: Parking requirements shall not exceed two spaces per unit and shall be otherwise limited to one space per bedroom. Parking requirements may be satisfied by tandem spaces and/or "lifts".

Exterior finishes: Exterior finishes and materials used on the buildings, the plaza, and the pedestrian pathway and the proposed landscaping shall be of the highest quality, shall respect and reflect the creek side setting of the project, and be commensurate with the single family and environmentally-sensitive quality of residential buildings in the City.

Fees (Refer to Section 6)

The Developer will pay the following specific fees

a. A public art fee consistent with the City's public art ordinance.

b. A contribution of $100,000 for off-site improvements earmarked for the BART pathway/project intersection. The City will make a good faith application for grant monies with which to complete these off-site improvements. Any funds by the City will

reduce LRP's contribution in an amount equal to five (5) percent of the total grant amount. (This addresses comments made at the July meeting)

c. A contribution of $50,000 for a traffic signal at the intersection of Dewing and Mt. Diablo Blvd.

The City may consider fees or exactions in addition to those that are designed to mitigate an environmental impact, as determined by the CEQA process.

Affordable Housing (Refer to Section 7)

The City will provide credit for the very low-income housing units already in place at the Town Center apartments, if the affordable housing is provided on site. If the units are provided off site, no credit will be given and the Developer will comply with the Redevelopment Agency's affordable housing requirements.

Development Review Process Stipulated in the Settlement Agreement

The approved Settlement Agreement calls for an initial joint meeting of the Council, Planning Commission and Design Review Commission wherein LRP will receive preliminary comments regarding the potential preliminary approval or disapproval of the project. Based on the feedback received, LRP may file an application with the City and the application will be reviewed by the Design Review and Planning Commissions before final action is taken by the City Council. The agreement establishes deadlines by which each of these bodies must act on the application. The following language is from the Settlement Agreement:

> As soon as such Heller-Manus plans are available and have been delivered to Lafayette, a joint meeting of the City Council, Planning Commission, and Design Review Commission shall be scheduled. The said joint meeting shall occur within 30 days of delivery of all plans and submittals required by the City. The plans shall be schematic and may include cut sheets to provide information regarding architectural details. The plans shall include elevations, site plan, a conceptual landscape plan, parking and circulation, proposed lighting, paving, furniture, art, colors and a materials board related to the building. At its joint workshop meeting, Lafayette shall make preliminary comments regarding the potential preliminary approval or disapproval of the Project utilizing such procedures for recording comments of each body. (Project Preliminary Comments).
>
> If the Project Preliminary Comments indicate potential approval of the project, then Lafayette staff will produce submittal requirements for consideration by the Design Review Commission (DRC), Planning Commission and City Council. Submittal requirement shall include all CEQA compliance requirements; provided, however, the prior EIR Studies and Addenda shall be considered (including those related to an earlier proposed apartment project for the Phase III Site). Otherwise, submittal requirements shall be limited to matters legally required for project consideration and directly responsive to comments from Council Members and Commissioners.

Within 30 days of the date on which the LRP Application shall be deemed to have been complete and the appropriate CEQA analysis shall have been completed, the DRC shall consider the plans from the joint meeting and Project submittal requirement at a hearing. The scope of DRC review shall be to recommend approval, conditional approval, or rejection of the plans and submittals furnished by LRP. The DRC action shall be completed within 45 days of the first DRC meeting on the Project unless LRP fails to provide any information or anything else necessary to act on the Application, including anything necessary for CEQA compliance.

The DRC's recommendation shall be forwarded to the Planning Commission as soon as possible, but no later than 30 days following DRC action. The Planning Commission shall take action on the LRP Application within 45 days of the first Planning Commission meeting on the Project, unless LRP fails to provide any information or anything else necessary to act on the application, including anything necessary for CEQA compliance.

The Planning Commission's recommendation shall be forwarded to the City Council as soon as possible. The City Council's action must be completed within 45 days of the first City Council meeting on the Project unless LRP fails to provide any information or anything else necessary to act on the application, including anything necessary for CEQA compliance. Such review shall include a CEQA determination and action on the Tentative Subdivision Map.

CEQA

The Town Center agreement does not fall within the definition of a "project" under the California Environmental Quality Act, for the following reasons: (1) it expressly requires CEQA compliance in connection with the City's consideration of the ultimate project proposal; (2) it does not commit the City to a definite course of action; (3) it does not grant any vested rights to develop; and (4) the City must still consider, and may still require, all feasible mitigation measures and alternatives, including the 'no project' alternative. Therefore, because full CEQA review will occur once a development application is submitted to the City, no CEQA review is required at this time

Planning Commission Recommendation

On March 20, 2008, by a vote of 6-1, the Commission recommended approval of the Fourth Amendment to the Town Center Development Agreement. The draft minutes of that meeting are attached. In its discussions, the Commission focused on the following topics:

1. Height: The Fourth Amendment establishes the height limit of the buildings in Phases III as follows:

   In no case shall the height of the buildings exceed the height of the existing Residential and Retail Components. (For purposes of this paragraph, the height limitation imposed by the existing Phase II project shall be determined by project height above sea level rather than existing grade.)

Some Commissioners felt that the reference to sea level could cause confusion in the future when plans for Phase III were being reviewed and suggested instead that a localized reference point be used. The applicant disagreed and pointed out that this language was drawn from the settlement agreement which the City Council has already approved.

2. Deadlines for reviewing Phase III application: There was concern expressed regarding the deadlines by which the reviewing bodies (Design Review Commission, Planning Commission, and City Council) must act on the application.

Staff Comments

Staff recommends approval of the Fourth Amendment to the Town Center Development Agreement. While the approved plans for Phase III call for a 26,000 square foot office building, both the City and the property owners agree that a residential use is more desirable given the site's location in the Downtown Core and its proximity to the BART station. The Developer will still be required to file an application for development with the City and will have to comply with CEQA requirements. We believe that the changes that have been negotiated in the Settlement Agreement and reflected in the draft Fourth Amendment to the Development Agreement will enable and facilitate the construction of a high quality residential development in Phase III.

Recommendation

Introduce Ordinance 574 approving the Fourth Amendment to the Town Center Development Agreement and continue to the April 28th meeting for second reading and adoption.

Attachments

1. Ordinance 574 with attached Fourth Amendment to the Town Center Development Agreement
2. Heller Manus plans
3. Minutes of the March 20, 2008 Planning Commission meeting

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

City of Lafayette
Attn: City Manager
3675 Mt. Diablo Blvd. #210
Lafayette, CA 94549-1968

[Fee Exempt - Gov't Code § 27383]
(Space above for Recorder's Use)

FOURTH AMENDMENT TO THE

TOWN CENTER

DEVELOPMENT AGREEMENT

[Assessor Parcel Numbers 243-040-034, 243-040-035, and 243-040-037]

between

THE CITY OF LAFAYETTE,
a California municipal corporation

and

CONSTANTINE AND JEANIE CHRISTOPOULOS,
husband and wife

and

LAFAYETTE RESIDENTIAL PARTNERS, LLC,
a Delaware limited liability company

and

BAY GLEN LIMITED PARTNERSHIP,
a California limited partnership

[Dated as of April 28, 2008 for reference purposes only]

This Fourth Amendment to the Development Agreement ("Amendment") is dated as of April 28, 2008, for references purposes only and hereby entered into by and between the City of Lafayette, a municipal corporation ("City"), and Constantine Christopoulos and Jeanie Christopoulos, husband and wife as successors in interest to Lafayette Town Center Associates ("Retail Developer"), Lafayette Residential Partners, LLC, a Delaware limited liability company as successor in interest to Lafayette Town Center Associates, and Bay Glen Limited Partnership, a California limited partnership as successor in interest to Lafayette Town Center Associates (collectively, "Developer").

RECITALS

This Amendment is entered into with reference to the following facts:

A. The City of Lafayette ("City") and Lafayette Town Center Associates entered into that certain Development Agreement dated June 1, 1998 and effective as of May 27, 1998, Recorded Document Number 98-0153218-00 ("Development Agreement").

B. The Development Agreement provides for the development of certain property in the City as a mixed-used development comprised of three phased components, retail, apartment, and office.

C. Section 7.06 of the Development Agreement permits the Developer to assign an interest in the property subject to the Development Agreement upon receiving City consent unless the transfer is expressly exempt.

D. Lafayette Town Center Associates, after providing notice to the City, transferred its interest in the apartment and office component to Bay Glen Limited Partnership as an exempt transfer pursuant to Section 7.06(d) of the Development Agreement.

E. Bay Glen Limited Partnership, after providing notice to the City, transferred its interest in the office component to Lafayette Residential Partners, LLC as an exempt transfer pursuant to Section 7.06(d) of the Development Agreement.

F. The City, Christopoulos Properties, and C & H Development Co., as successors in interest to Lafayette Town Center Associates entered into an Assumption Agreement dated September 17, 1998, whereby City consented to the transfer of the retail parcel and Christopoulos Properties and C & H Development Co. assumed all of the duties and obligations of Lafayette Town Center Associates as those obligations relate to the retail parcel.

G. Christopoulos Properties and C & H Development Co., after providing notice to City, transferred is interest in the retail component to Constantine and Jeanie Christopoulos as an exempt transfer pursuant to Section 7.06(d) of the Development Agreement.

H. The Development Agreement was set to expire within seven years after the effective date of the Development Agreement.

I. The parties entered into a First Amendment to the Development Agreement dated September 13, 2004 to extend the term by one (1) year and extend the development timing for the Office Component by one (1) year ("First Amendment").

J. The parties entered into a Second Amendment to the Development Agreement dated May 22, 2006 to further extend the term by one (1) year and extend the development timing for the Office Component by one (1) year ("Second Amendment").

K. The parties entered into a Third Amendment to the Development Agreement dated April 23, 2007 to further extend the term by one (1) year and extend the development timing for the Office Component by one (1) year ("Third Amendment").

L. The parties desire to further amendment the Development Agreement to extend the term by two (2) years and include a Residential Component as an alternate to the Office Component with additional applicable fees and terms.

TERMS

Section 1. Effective Date. It is the intent of the parties that this Fourth Amendment shall become effective prior to the expiration of the Development Agreement.

Section 2. Recordation. The City, Developer, and Retail Developer hereby consent to the recordation of the Fourth Amendment in the Official Records of Contra Costa County, California, at any time following the effective date of the Fourth Amendment.

Section 3. Amendment of Section 3.02(d) of the Agreement. Section 3.02(d) of the Agreement is hereby amended to include the following:

> "The City and Developer agree that an alternative to the Office Component may include a residential project; a summary of the attributes of a residential project the parties jointly find to be an acceptable use:
>
> i. The architectural firm Heller-Manus has previously conducted conceptual studies of the Phase III project site for development of a residential project. Developer shall retain Heller-Manus to produce plans acceptable to it intended to create an economically viable development project; provided, however, the general foot print, general elevations, general site plan and general plaza dimensions of the original Heller-Manus work product attached hereto as Attachment 1 shall be retained. (The

parties acknowledge that the foregoing does not directly address building height; the height limitations applicable to the project shall be as defined in Section 3.03.)

ii. There shall be no restaurant use requirement imposed by the City as to the project, provided that an acceptable open space substitute (e.g., enlarged plaza, children's fountain/playground/spray ground, sculpture park) or, alternatively, a public or quasi-public interior space substitute (e.g., art gallery, chamber of commerce office, non-profit foundation) is proposed that meets City parking requirements. In addition, there shall be no requirement for live/work units, provided that an acceptable alternative is proposed that enlivens the southern edge of the development that meets City aesthetic requirements. Developer shall apply for a Land Use Permit to define the specific acceptable open space substitute or public or quasi public interior space substitute for the prior required restaurant use. The issuance of a Land Use Permit shall be a condition precedent to use of the referenced space—but not to approval of the Project itself.

iii. Exterior finishes and materials used on the buildings, the plaza, and the pedestrian pathway and the proposed landscaping shall be of the highest quality, shall respect and reflect the creek side setting of the project, and be commensurate with the single family and environmentally-sensitive quality of residential buildings in the City. The City will require the extensive use of architectural features involving a variety of building materials including stone, brick, minimal use of smooth trowelled stucco, and wood for the exterior of the buildings. Other materials and finishes that are consistent with a high quality residential project may be offered by Developer as alternatives. Approval of such materials is at the discretion of the City.

iv. All matters involving non-public spaces and portions of the project and/or individual units which are not viewable from off-site shall be matters determined by Developer at its sole and exclusive discretion. (The foregoing specifically includes all interior finishes, fixtures and amenities of every kind and sort.)

v. Parking requirements shall not exceed two spaces per unit and shall be otherwise limited to one space per bedroom. Parking requirements may be satisfied by tandem spaces and/or "lifts"; provided, however, such alternatives must be reviewed and approved by a qualified traffic engineer and the City's engineer to ensure feasibility. Developer shall provide parking as set forth above and shall also include replacement parking for any spaces

lost in the retail parking lot in addition to required spaces pursuant to prior agreements (e.g. CC&Rs, Development Agreement etc)."

Section 4. Amendment of Section 3.03 of the Agreement. Section 3.03 of the Agreement is hereby amended to include the following:

"In the event the Developer pursues the residential project alternative as provided for in Section 3.02(d), Lafayette's building ordinances in existence as of February 25, 2008 shall be applicable. The parties acknowledge that a Specific Plan Amendment to the BART Block Specific Plan shall be required to develop a residential project alternative. Developer shall file an application for amendment of the BART Block Specific Plan and Lafayette shall thereafter process the same as necessary to accommodate the planned residential development so long as the potential preliminary approval of said project is indicated following the joint meeting of the Council and subsidiary commissions all as set forth hereafter. The amendment of the Specific Plan shall be with respect to permissible building height. In no case shall the height of the buildings exceed the height of the existing Residential and Retail Components. (For purposes of this paragraph, the height limitation imposed by the existing Phase II project shall be determined by project height above sea level rather than existing grade.)"

Section 5. Amendment of Section 3.07 of the Agreement. Section 3.07 of the Agreement is hereby amended in its entirety to read as follows:

"3.07 Development Timing. Developer may phase the construction of the apartment and office Components and Retail Developer may phase the construction of the retail Component, but only to the extent that it complies with the following schedule: building permits for the retail Component shall be obtained within two (2) years of the Effective Date of this Agreement except for Building A; building permits for the apartment Component shall be obtained within three (3) years of the Effective Date of this Agreement; building permits for the office Component or alternate to the office Component as defined in Section 3.02(d) shall be obtained within twelve (12) years of the Effective Date of this Agreement, all as provided for in G-3 of the Conditions of Approval. Developer and Retail Developer understand that City cannot issue building permits for a particular Component until City has approved a Final Development Plan for that Component. The occurrence of any event specified in G-27 of the Conditions of Approval shall extend these time periods.

Within these limits, Developer and Retail Developer may develop the Components in other than the order of retail first, then residential, then office. However, in this event the City has the authority and may impose conditions which may alter the timing of Developer's obligations to install improvements both within and outside of the Property, reasonably justified by the alteration of the order in which the phases are initiated. However, in any event the following improvements must be completed before issuance of occupancy permits for the first phase initiated by Developer or Retail Developer:

1. Installation of the signal at Mt. Diablo Boulevard and Lafayette Circle, and associated median improvements; and

2. Repair of the culvert at the southern end of the creek, installation of a new headwall, and cleaning the creek of debris and dead vegetation.

After obtaining a building permit for each Component, Developer and Retail Developer shall proceed diligently to complete construction."

Section 6. Amendment of Section 3.09 of the Agreement. Section 3.09 of the Agreement is hereby amended to include the following:

"In the event the Developer elects to pursue the residential project alternative as listed in Section 3.02(d), the fees payable to the City as otherwise required there under shall be payable at the rate in existence at the time a project application is actually filed. The City may charge the following specific fees, which shall be paid concurrently with the issuance of building permits, in the event the Developer pursues a residential project alternative as listed in Section 3.02(d):

(a) Such "art fee" as Lafayette may impose as of February 25, 2008, the date of the Amended and Restated Settlement Agreement between the City and Lafayette Residential Partners ("LRP") on projects of the sort and scale of proposed residential development on the Phase III Site;

(b) A contribution to off-site improvements ear marked for the BART pathway/project intersection in a sum not to exceed $100,000; provided, however, any monies so paid shall in fact be allocated to and expended for such purpose in accordance with plans and specifications reasonably approved by Developer. Additionally, the City shall make good faith application for grant monies with which to complete the subject off-site improvements

and any monies obtained in such fashion shall reduce Developer's contribution in an amount equal to five (5) percent of the total grant amount. Developer shall not receive any monies in excess of its contribution, in the event five (5) percent of the total grant amount exceeds Developer's contribution.

(c) A contribution in a sum not to exceed $50,000 for a traffic signal at the intersection of Dewing and Mt. Diablo Blvd. (The amount of contribution, if any, shall be based strictly on the incremental increase of traffic, if any, generated by the proposed residential project alternative over that related to the office component.)

(d) The parties acknowledge that the City may consider fees or exactions in addition to those listed in this Section), revised plans, or other measures not specified in this Agreement that are designed to mitigate an environmental impact, as determined by the CEQA process, and those measures shall not be considered to violate this Agreement.

The foregoing specific fee provisions shall have no application in the event Developer elects to construct its approved office project.."

Section 7. Amendment of Section 3.15 of the Agreement. Section 3.15 of the Agreement is hereby amended to include the following:

The following affordable housing requirements shall be imposed as to the residential project alternative as listed in Section 3.02(d). Developer may provide affordable housing either on site or off site. California Redevelopment Law imposes a 15% affordable housing requirement of which 6% of units are to be allocated for very low income households and 9% of units allocated to low or moderate income households. (The aforesaid state law also imposes certain requirements regarding affordable units for qualified households at very low income, low or moderate income for not less than 55 years for rental units and 45 years for owner-occupied units.) The Developer may elect to meet affordable housing requirements through the provision of off-site units and, in such case, the requirement shall be 15% of the aggregate number of units constructed as required by California Redevelopment Law with 6% thereof allocated to very low and 9% to moderate income units. The election to provide affordable housing either on site or off site shall be that of the Developer with requirements imposed on said election to be made as herein set forth. (Affordable units shall be provided in configurations of one bedroom or two-

bedroom units in the same proportion as market rate units comprising the Project.)

Should Developer propose to provide affordable housing on site, requirements related to the number and type of affordable units shall be calculated in a fashion which includes the affordable housing units presently in place at the Phase II Residential Rental Project.

The Apartment Component currently has in place 15 very low income units. That allocation of affordable units exceeds the requirement for very low income households by 10 units and exceeds the overall affordability requirement by 3 units. If it is assumed that the Alternative to the Office Component will consist of 75 units, then the aggregate affordable unit requirement for the Apartment Component and the Alternative to the Office Component (comprising 150 units) would be 23. Since the very low income household unit requirement for the Apartment Component already exceeds the entire very low income requirement for Phases II and III together, there shall be no requirement for additional very low income household units. In order to satisfy affordability requirements based on a combined 150 unit count between the Apartment Component and the Alternative to the Office Component, the remaining shortfall in affordable units (8) shall be constructed as a part of Alternative to the Office Component and shall be allocated to moderate income households. (The foregoing calculation is illustrative only as the number of units comprising the Alternative to the Office Component alternative has yet to be determined. Therefore, affordability requirements shall be calculated with respect the aggregate number of units comprising both the Apartment Component and Alternative to the Office Component with credit given for excess Apartment Component units against requirements otherwise applicable to the Alternative to the Office Component.)

In the event Developer elects to provide affordable housing off site, then the 15% affordable housing requirement of California Redevelopment Law shall apply and the Developer shall provide 6% of the units for very low income households and 9% of the units for low or moderate income households.) (By way of example, should the project be composed of 80 units, affordable housing requirements shall be satisfied by means of a credit of four (4) very low units; the provision of four (4) very low units and the provision of four (4) moderate for a total of eight (8) new affordable units.)

The terms "very low income households" "low" and "moderate income" shall have the same meanings as set forth in California Health Safety Code and Section 50052.5 as that section may be amended from time to time and shall provide an allowance for utilities and maintenance costs established by the State of California Department of House and Community Development, plus the actual homeowners association fees, dues and assessments as established from time to time. "Area median income" as referenced in California Health and Safety Code Section 50052.5 shall mean the area median income for Contra Costa County, California. as permissibly adjusted for family size appropriate for the unit by the State of California Department of Housing and Community Development in accordance with adjustment factors adopted and amended from time to time by the US Department of Housing and Urban Development pursuant to Section 8 of the United States Housing Act of 1937 and California Health and Safety Code Section 50093."

Section 8. Amendment of Section 7.04 of the Agreement. Section 7.04 of the Agreement is hereby amended in its entirety to read as follows:

"7.04 Term. The term of this Agreement begins upon the Effective Date and shall extend until the earlier of: (1) the expiration of twelve (12) months from the issuance of the final certificate of occupancy for the last Component of the Project to be undertaken or (2) twelve (12) years after the effective date of this Agreement, if no building permit is obtained for the Office Component or the Alternative to the Office Component as defined in Section 3.02(d) or (3) if a building permit is obtained for the Office Component or Alternative to the Office Component, but the permits expires or is abandoned prior to the commencement of the construction, upon the date such permit expires or is abandoned. The expiration of this Agreement does not affect the continued existence of the documents recorded pursuant to this Agreement or the DDA, CCRs (Exhibit 5) or the Affordability Covenants set forth in the DDA. The expiration of these documents is governed by their own provisions."

Section 9. Counterparts. This Fourth Amendment may be executed in quadruplicate originals, each of which is deemed to be an original, but when taken together shall constitute but one and the same instrument.

Section 10. No Other Amendments. Except as set forth in this Fourth Amendment, the Third Amendment, Second Amendment, First Amendment, and the Agreement remains in full force and effect according to its terms.

Section 11. Incorporation of Amendment. From and after the effective date of this

Fourth Amendment, wherever the term "Agreement" appears in the Agreement, it shall be read and understood to mean the Agreement as amended by the First Amendment, Second Amendment, Third Amendment, and Fourth Amendment.

Section 12. Entire Agreement. This Fourth Amendment, Third Amendment, Second Amendment, and First Amendment, together with the Agreement, constitutes the entire understanding and agreement of the City, Developer and Retail Developer with respect to the subject matter set forth herein and therein, integrates all of the terms and conditions mentioned herein and therein, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof or thereof.

Section 13. Defined Terms. All initially capitalized terms used, but not otherwise defined, herein shall have the meanings ascribed to such terms in the Agreement.

Section 14. Severability. If any provisions of this Fourth Amendment shall be deemed to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not in any way be affected or impaired hereby.

IN WITNESS WHEREOF, the parties hereto have executed this Fourth Amendment on the date and year first-above written.

[Signatures on the following pages]

CITY:

CITY OF LAFAYETTE

_____

Mike Anderson, Mayor

ATTEST:

_____

Joanne Robbins, City Clerk

APPROVED AS TO FORM:

_____

Malathy Subramanian, City Attorney

DEVELOPER:

LAFAYETTE RESIDENTIAL PARTNERS, LLC,
a Delaware limited liability company

By: _____
Richard J. Dishnica, Member

By: _____
Ivan M. Glover, Member

BAY GLEN LIMITED PARTNERSHIP
a California limited partnership

By: PARK PLACE VENTURES, LLC,
a California limited liability company
Its: General Partner

By: _____
Richard J. Dishnica, President

RETAIL DEVELOPER:

CONSTANTINE CHRISTOPOULOS,
husband and wife

By: _____

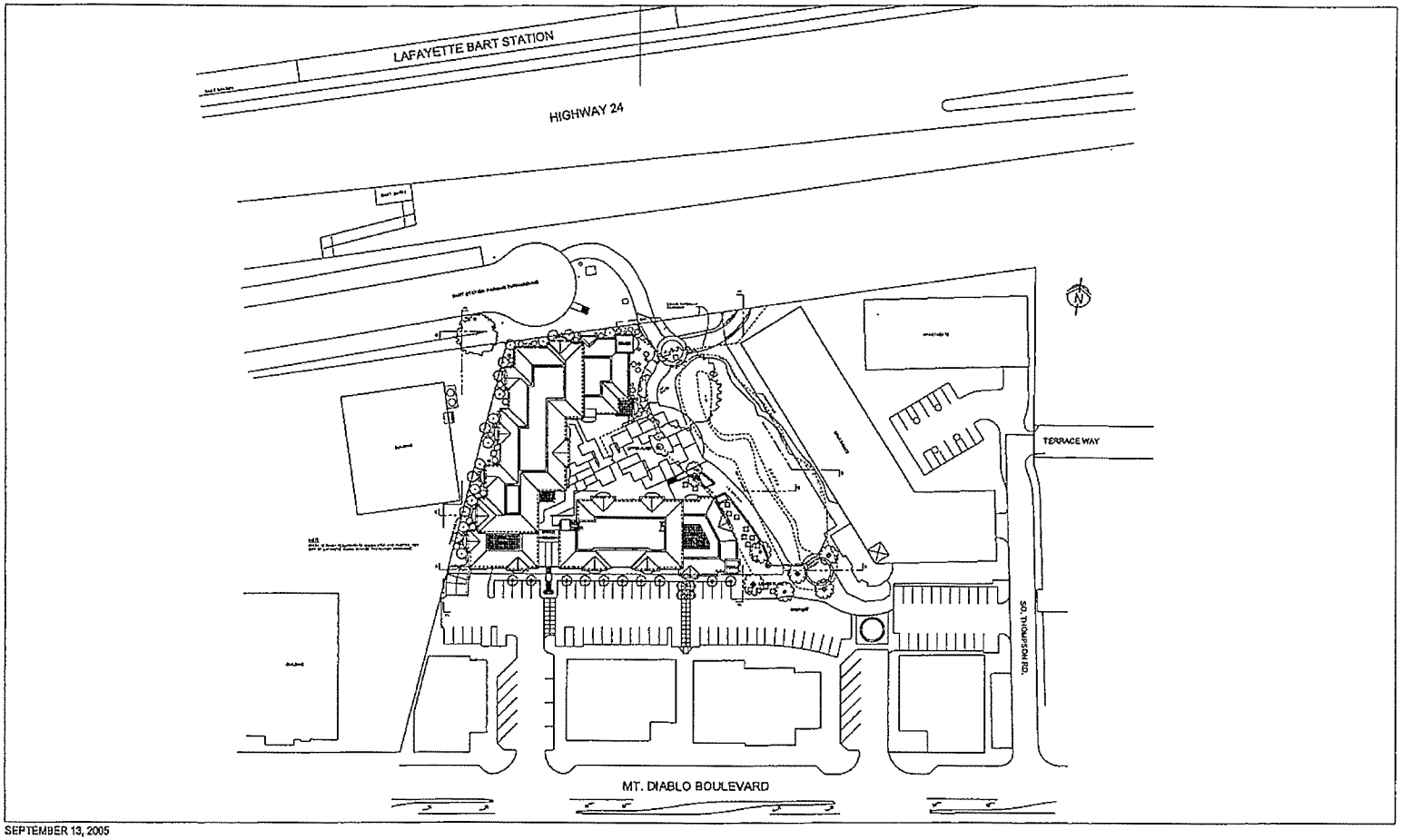
JEANIE CHRISTOPOULOS,
husband and wife

By: _____

ATTACHMENT 1

ORIGINAL HELLER MANUS PLANS

[Attached behind this page]



SEPTEMBER 13, 2005

0 50' 150'

LAFAYETTE CREEK

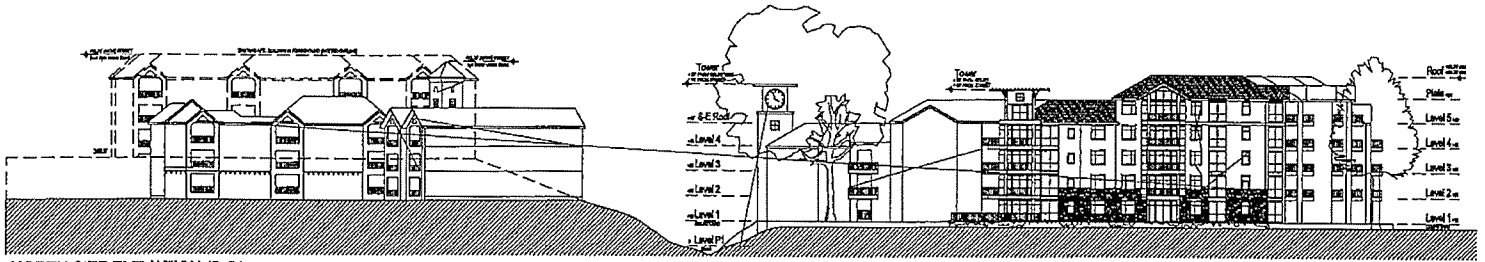
SITE PLAN

KB HOME SOUTH BAY, INC.

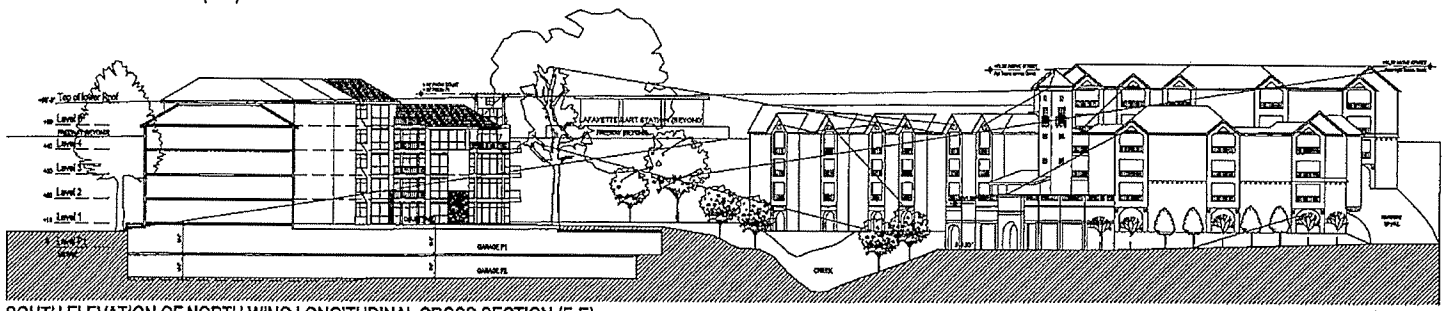
LAFAYETTE, CA

HELLER • MANUS ARCHITECTS H•M

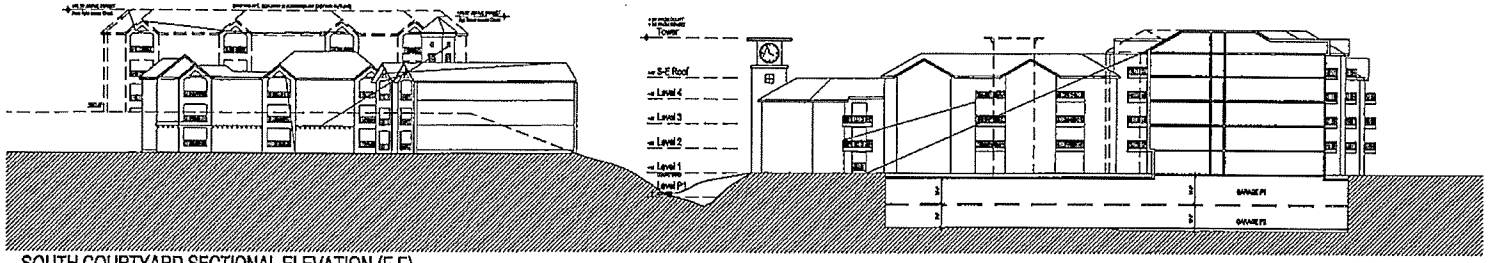
©2005 ALL RIGHTS RESERVED



NORTH SITE ELEVATION (D-D)



SOUTH ELEVATION OF NORTH WING LONGITUDINAL CROSS SECTION (E-E)



SOUTH COURTYARD SECTIONAL ELEVATION (F-F)

PTEMBER 13, 2005
CALE 1"= 40'
40 80

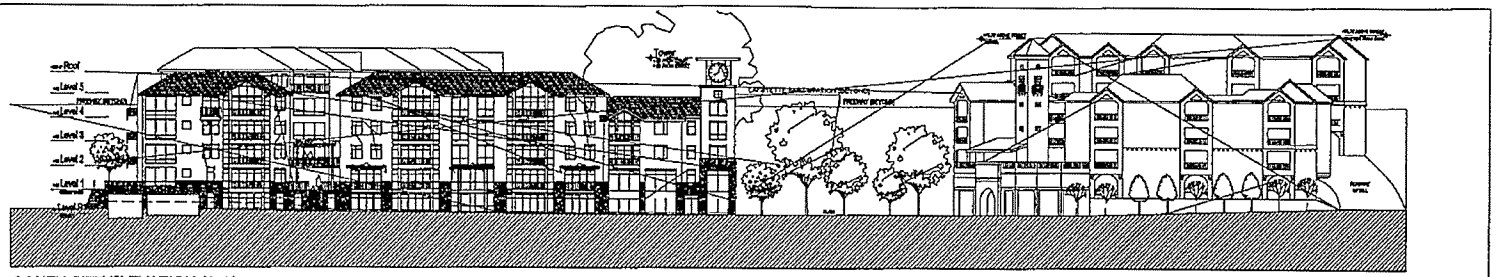
LAFAYETTE CREEK

LAFAYETTE, CA

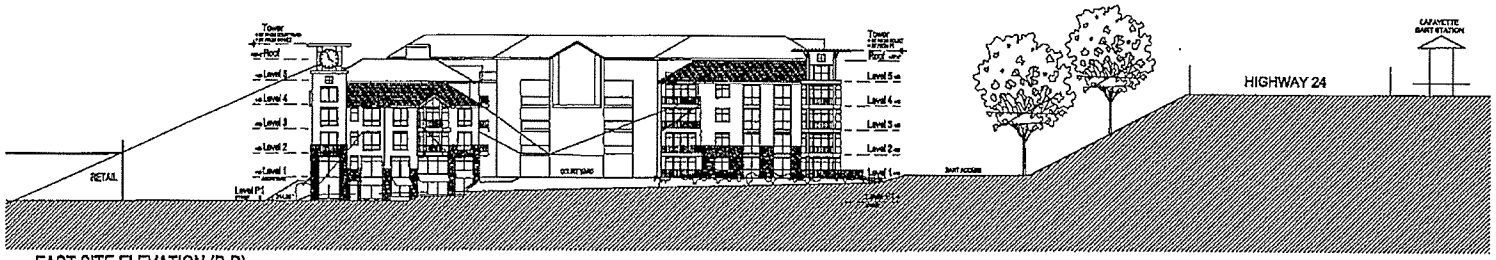
SITE ELEVATIONS

3 HOMES SOUTH BAY

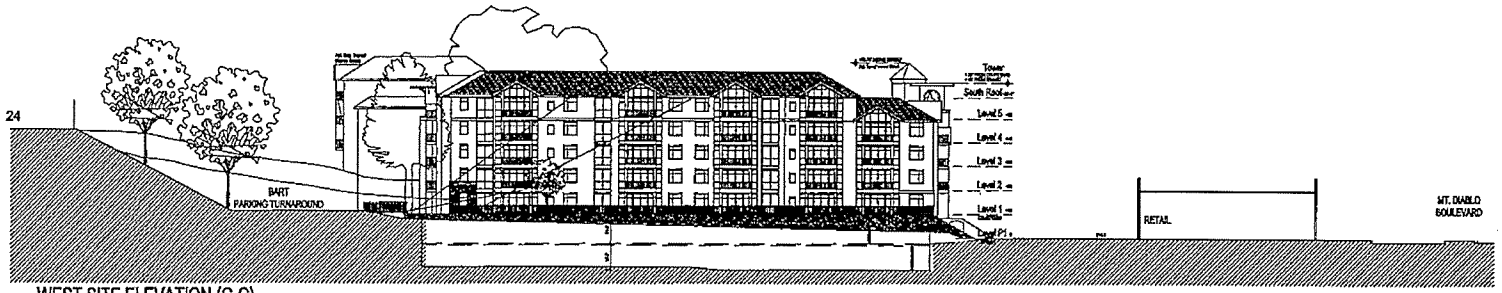
HELLER • MANUS ARCHITECTS



SOUTH SITE ELEVATION (A-A)



EAST SITE ELEVATION (B-B)



WEST SITE ELEVATION (C-C)

SEPTEMBER 13, 2005
SCALE 1"= 40'
0 40 80

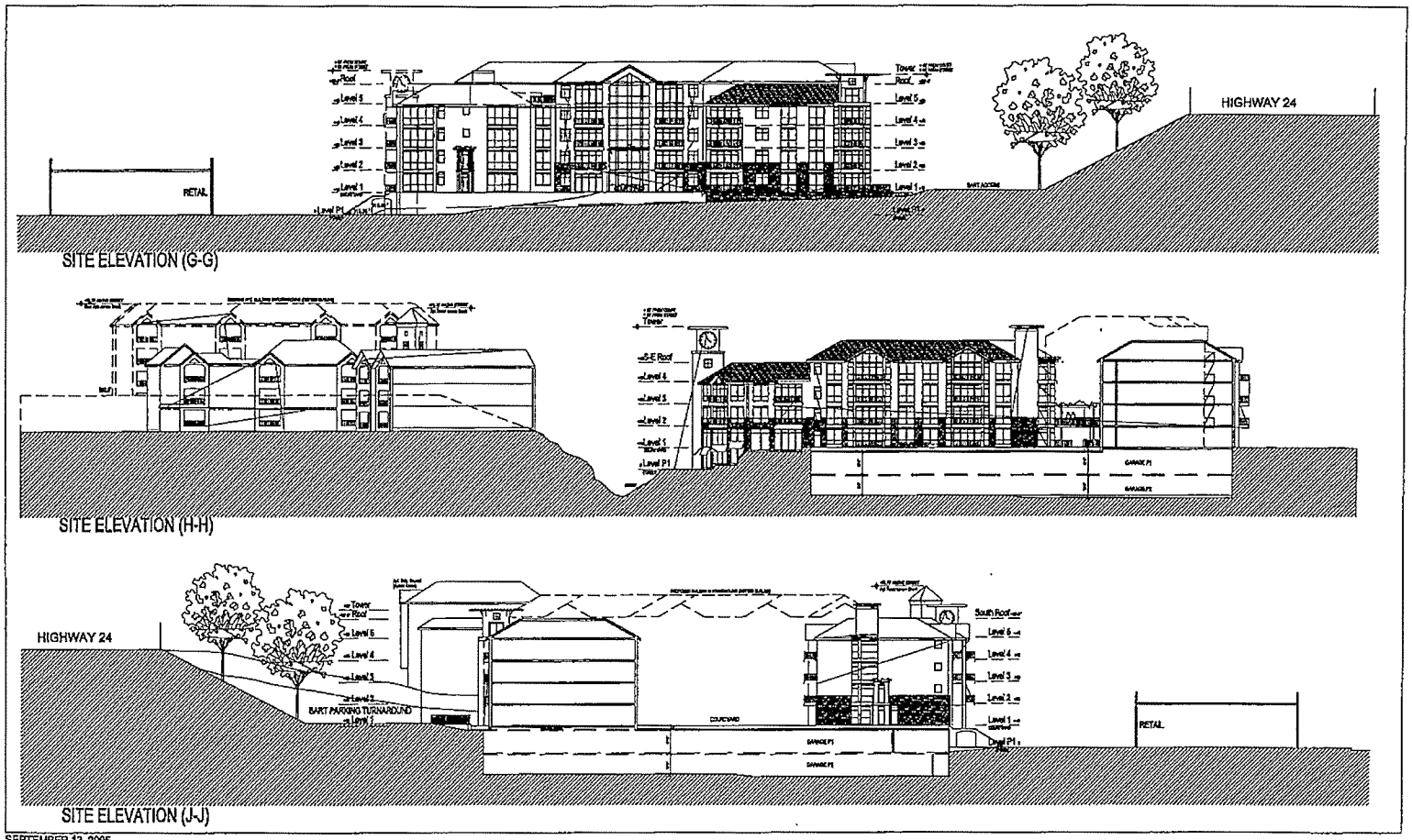
LAFAYETTE CREEK

SITE ELEVATIONS

KB HOMES SOUTH BAY

LAFAYETTE, CA

HELLER·MANUS ARCHITECTS



SEPTEMBER 13, 2005
SCALE 1"= 40'
0 40 80

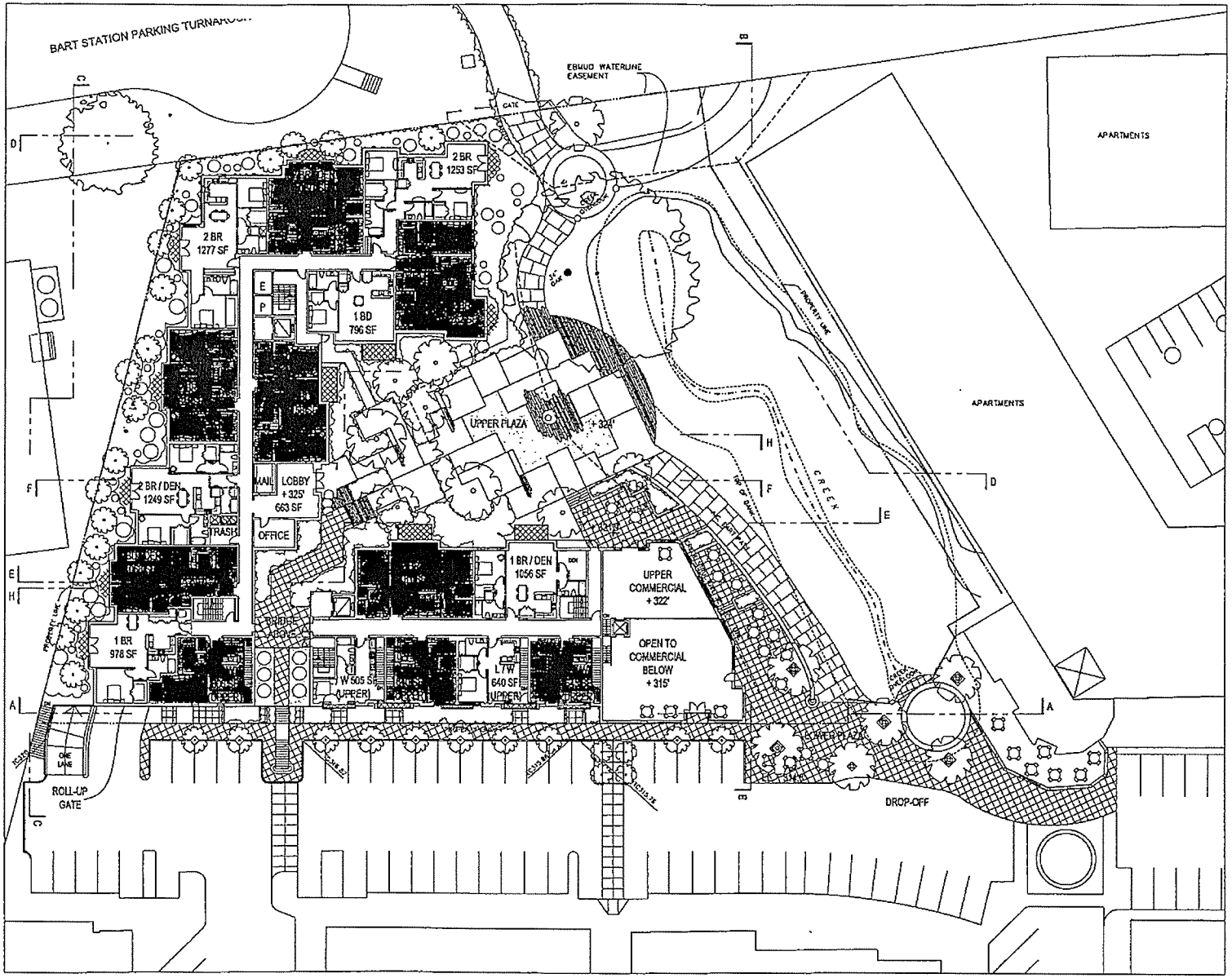
LAFAYETTE CREEK

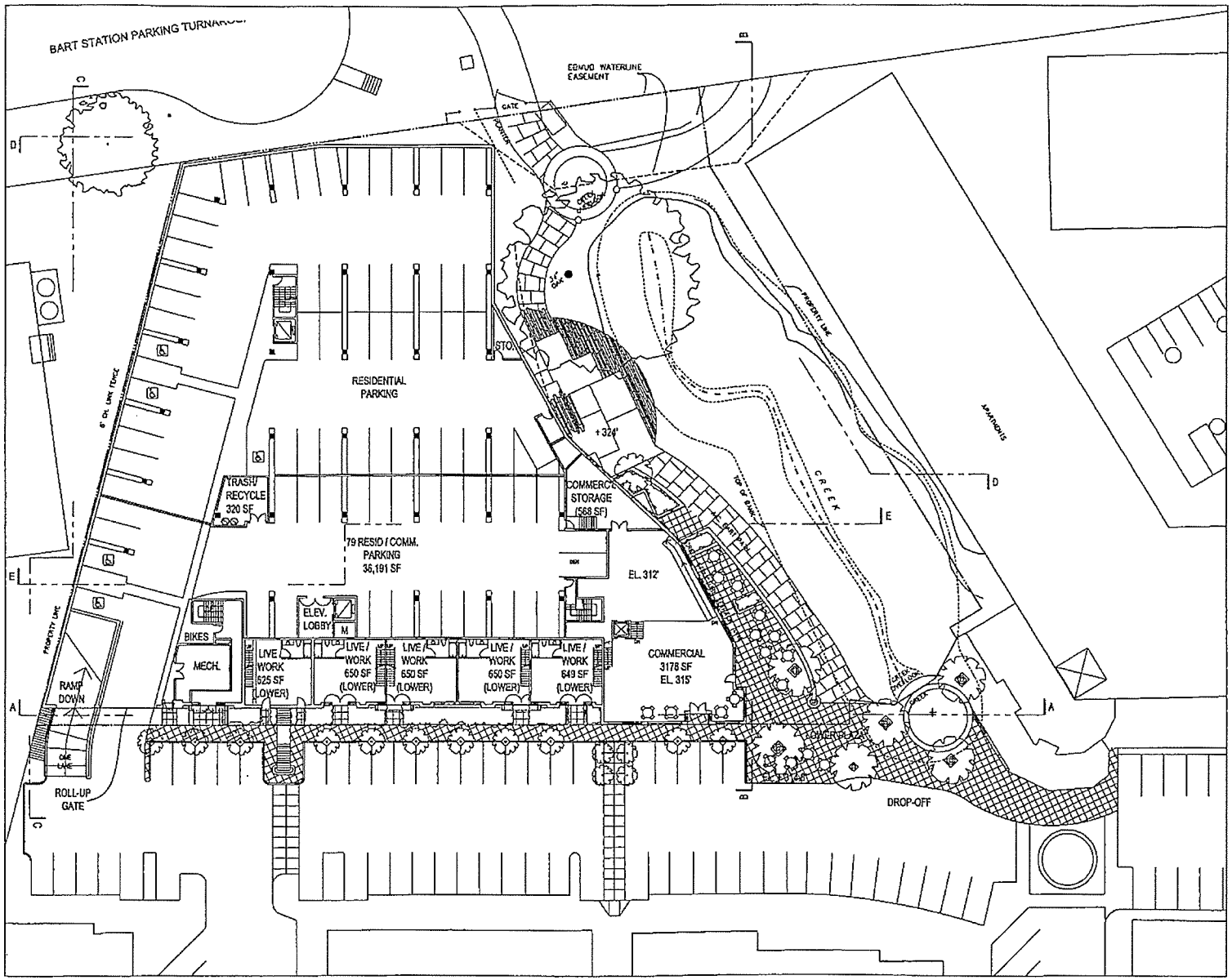
SITE ELEVATIONS

KB HOMES SOUTH BAY

LAFAYETTE, CA

HELLER • MANUS ARCHITECTS


BART STATION PARKING TURNAROUND
EBMUD WATERLINE EASEMENT
APARTMENTS
APARTMENTS
2 BR 1253 SF
2 BR 1277 SF
1 BD 796 SF
UPPER PLAZA
+324'
2 BR / DEN 1249 SF
MAIL
LOBBY +325' 663 SF
TRASH
OFFICE
1 BR / DEN 1056 SF
UPPER COMMERCIAL +322'
OPEN TO COMMERCIAL BELOW +315'
1 BR 978 SF
W 505 SF (UPPER)
L / W 640 SF (UPPER)
ROLL-UP GATE
DROP-OFF
WATER PLAZA
CREEK
PROPERTY LINE


BART STATION PARKING TURNAROUND
EBMUD WATERLINE EASEMENT
GATE
FENCE
RESIDENTIAL PARKING
+324'
TRASH/ RECYCLE 320 SF
COMMERCIAL STORAGE (568 SF)
79 RESID / COMM. PARKING 36,191 SF
EL. 312'
ELEV. LOBBY
BIKES
MECH.
LIVE / WORK 625 SF (LOWER)
LIVE / WORK 650 SF (LOWER)
LIVE / WORK 650 SF (LOWER)
LIVE / WORK 650 SF (LOWER)
LIVE / WORK 649 SF (LOWER)
COMMERCIAL 3178 SF EL. 315'
RAMP DOWN
ROLL-UP GATE
DROP-OFF
PROPERTY LINE
TOP OF BANK
CREEK
APARTMENTS
A
B
C
D
E

A. **CONSIDERATION OF THE FOURTH AMENDMENT TO THE TOWN CENTER DEVELOPMENT AGREEMENT** which (1) Extends the term of the Development Agreement for no more than two additional years, (2) Allows either: (i) an office use as originally contemplated in the Development Agreement or (ii) a residential use for Phase III of the Town Center development, (3) Describes the attributes of the residential project alternative, and (4) Establishes specific fees which may be charged in the event that a residential project alternative is pursued. Property is located north of Mount Diablo Blvd., between South Thompson Road and the Dewing Avenue extension. APNs 243-040-034 to 037.
Project Planner: Niroop K. Srivatsa, Tel (925) 299-3206, nsrivatsa@lovelafayette.org
Recommendation: Recommend approval to the City Council
(Estimated time: 30 min*)

Project Planner Niroop Srivatsa reported the item is a request to amend the development agreement to add a residential alternative to Phase III of the Town Center. The amendment does not guarantee approval of the project. The applicant is still required to file an application for the development and comply with CEQA requirements. Staff recommends approval of the Fourth Amendment to the Town Center Development Agreement to the City Council as the City can support a residential use.

Vice Chair Lovitt did not believe the office building is consistent with the specific plan. Ms. Srivatsa explained the specific plan does not specify an office building. The office building is in the approved planned development.

Vice Chair Lovitt asked if there was a height restriction. Ms. Srivatsa said the specific plan height restriction is three stories. The development agreement requires the applicant come in for an amendment to the specific plan.

Chair Mitchell asked how the height level would be measured as part of the Town Center starts way up on the hill and goes up from there. He asked if the height restrictions in the specific plan, the zoning, and the general plan will be abandoned.

Ms. Srivatsa said since the development agreement was approved in 1994, the application will follow the rules of the old general plan. It will not be governed by the new general plan. The old general plan had no height limit. The new general plan has height limits of up 45 feet. The project is governed by the BART Block Specific Plan which has a three storey limit. The applicant would have to amend that in order to get approval. The Heller-Manus plans were presented to the City Council and the Planning Commission in 2005. When the City Council amended the settlement agreement recently, they felt if an application generally resembled the C-shaped Heller-Manus plans, the Council would be willing to consider an amendment to the BART Block specific plan to accommodate residential use. The maximum possible height limit established for buildings in Phase III is that they be no taller than the tallest apartment building in Phase II of the Town Center. The development agreement establishes a framework of rules in which an application can be submitted. There is no guarantee that an application will be approved.

Vice Chair Lovitt was concerned how the developer would move forward with a dramatic potential height without some kind of assurance that he is going to be able to achieve that. Ms. Srivatsa said the process as outlined in the development agreement calls for a pre-application meeting where the developer can expect to receive very clear direction on the project. Based on those comments, the developer could either choose to continue with the already approved office application or to venture into a residential alternative.

Commissioner Humann felt the sea level height component is a dangerous thing to tie on to the project. It is important the project is at a relative height, and not to the sea level benchmark. Ms.

Srivatsa said she would have to review the matter and appreciates his technical expertise in the area.

Chair Mitchell asked if staff knew what the height of the Phase 2 buildings are. Ms. Srivatsa deferred the question to the applicant.

Commissioner Curtin-Tinley asked if the development agreement allows for all office, all residential, or a mix of the two. Ms. Srivatsa states it essentially allows for office or residential.

Commissioner Curtin-Tinley asked if the applicant wanted a mixed use project. Ms. Srivatsa said that possibility was not discussed. Commissioner Holt believes the developer should be given those options and asked if they were aware of all of them. Ms. Srivatsa deferred the question to the developer.

David Bowie, Project Attorney, said the height issue from the standpoint of the developer, was selected based on the height of the current rental project that is already there. The highest point was picked and defined as an area they would not exceed. An amendment would have to be made on the specific plan, to get the height in the realm of the level of height permissible in the proposed amendment. They want to make sure they can come up with an economically feasible project. The City Council's consultant reviewed the possibilities of appropriate development for this particular site. A residential use might be a preferable and better use for this particular project in Downtown from the City's standpoint. The problem is the type of residential use that was pursued earlier is not going to be economically viable. They worked very hard to come up with a feasible project that would be a compromise for the City and the developer. They currently have a fully approved office project. The drawings are complete. Plan check has been completed. They can pull building permits tomorrow if they want. They are cognizant of the fact the City would like them to pursue residential. They have an existing settlement agreement which they have negotiated and signed. This step of amending the development agreement is mandated by the settlement agreement and conforms to the two documents and creates the opportunity for the option of either housing or office. They don't know which one it's going to be. Staff indicated that there will be a joint meeting in an effort to get some sense of what the City is going to want. The process they have developed through the settlement agreement and in the development agreement is a very fair process. It preserves all the City's options and all their decision making powers, and at the same time gives the developer better guidance in terms of what might be feasible so they won't waste a lot of time and money on a development that would not be acceptable.

The height issue to sea level is simply to give them an absolute finite line which they would propose doing. It seemed to be an appropriate height selection because it is the height of the building in the same original project. The settlement agreement is a good compromise which provides options to everybody. They ask the Planning Commission approve the development agreement so they can move forward with the rest of the project at this point. His client has no interest in mix use. At the moment, they have a workable means of going forward with a residential project or an office project.

Rick Dishnica of Lafayette Residential Partners, said it is not so much an unwillingness to consider the two options. The land is on one buildable acre. As a practical matter, the difficulty of packing more uses onto the site got very complicated and made it an infeasible project that was not practical or cohesive.

Chair Mitchell asked if the highest point would be the top of Town Center 2 which is up on top of the hill. Mr. Dishnica said that is probably the highest point. He is not sure where the tower comes in relative to that. The building closest to Mt. Diablo Boulevard is lower than the building that is back towards the freeway.

Chair Mitchell opened the public hearing for comments. With none received, the public portion was closed.

Commissioner Humann asked if they can reword the term sea level or strike it out of the language. He has come across the problem before where the term sea level was misunderstood and exploited. The height needs to be site-specific and should be no higher than whatever exists on the property. Ms. Srivatsa said she would be happy to forward any suggestions he would like to make to the applicant for consideration. Staff wants to be absolutely clear from a lay person's perspective, the building is to be no taller than the tallest Town Center, Phase 2 building.

Commissioner Chastain felt they could establish local survey data for building heights and apply it towards the project.

Commissioner Humann reiterated he would like the term sea level stricken to eliminate arguments down the road. It has created confusion in the past. He does want the City to have to argue that point five years from now. It would be cleaner to eliminate the reference to sea level.

After conferring with the applicant, Ms. Srivatsa reported the applicant has reminded staff the language comes from the settlement agreement with the City. Staff can forward the concerns to the City Council, with the message the City does not want to end up in a situation where there is disagreement about where sea level is on any particular day.

Mr. Bowie believes the language in the settlement agreement does what Commissioner Humann is suggesting. The language states "In no case shall the height of the buildings exceed the height of the existing Town Center buildings for purposes of this paragraph, the site limitation in both of existing Phase 2 project shall be determined by project height above sea level, rather than the existing grade." The height is not to be any higher than Phase 2, which is a local level. They can define Phase 2 with respect to sea level. The point of reference is still that localized site.

Commissioner Holt believed they are making this more difficult than it has to be. The intent is not to have anything higher than Phase 2.

Chair Mitchell asked if the time constraints listed on page 4 of the staff report was something the City had ever done before.

Ms. Srivatsa responded the time constraints came from the settlement agreement and that she has not dealt with time limits in another application. The City Council felt it would be important to keep the project on track and on time. Once the application is reviewed by the Planning Commission, staff will have an obligation to forward comments to the City Council within a certain period of time. The same would apply for Design Review. It will not affect the CEQA process, which still needs to be done on the project.

Chair Mitchell felt the time constraints were unreasonable. It would not give them enough time to address their concerns satisfactorily. He did not want to be put in a position of having to turn down a project that everybody wants.

Commissioner Holt moved and Commissioner Chastain seconded the motion to recommend to the City Council approval of the Fourth Amendment to the Town Center Development Agreement.

AYES: **Ateljevich, Chastain, Curtin-Tinley, Holt, Humann, and Lovitt**
NOES: **Mitchell**
ABSENT: **None**
ABSTAIN: **None**